

STATE OF CALIFORNIA
California Energy Commission

In the Matter of:

The Application for Certification
for the GENESIS SOLAR ENERGY
PROJECT

Docket No. 09-AFC-8

**CALIFORNIA UNIONS FOR RELIABLE ENERGY'S
COMMENTS ON THE
PRESIDING MEMBER'S PROPOSED DECISION**

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I. INTRODUCTION

California Unions for Reliable Energy (“CURE”) has reviewed the Presiding Member’s Proposed Decision (“PMPD”) for the Genesis Solar Energy Project (“Project” or “Genesis Project”). The PMPD concludes that although the Project would result in significant impacts to the environment, even with proposed mitigation measures, the benefits of the Project outweigh those impacts. Specifically, according to the PMPD, the Project’s significant unmitigated cumulative impacts to cultural resources, visual resources and land use are outweighed by “economic, legal, social, technological, or other benefits of the project.”¹ For the remaining resource areas, the PMPD finds that proposed mitigation will reduce the Project’s impacts to a less than significant level.

The PMPD’s conclusions are flawed for several reasons. First, the Project’s impact on the Colorado River remains significant and unmitigated. Staff concluded that the Project would result in a significant impact to the Colorado River because “the reduction in outflow from the CVGB to the PVMGB” from Project groundwater use “will be made up at least in part by inflow from the Colorado River.”² As shown below, Soil&Water-15 and -19 do not reduce the Project’s impact on the Colorado River to below a less than significant level. Second, the Commission failed to analyze the Project’s impacts on human burials and ethnographic resources and therefore the Commission cannot make required findings pursuant to CEQA. Third, the PMPD’s finding that downstream transmission facilities need not be analyzed is inconsistent with other cases currently before the Commission and the Commission’s long history of requiring environmental review of downstream transmission facilities, as required by CEQA. Fourth, the Project’s impacts to workers, the public and the environment from the Project’s use of heat transfer fluid (“HTF”) were not adequately analyzed. Finally, the PMPD’s conclusion that the Project’s impacts to special-status plants will be reduced to a level below significant is not supported by the record and the impacts remain significant and unmitigated.

CURE submits these CEQA comments on the PMPD and requests that the Commission provide responses to these comments in accordance with CEQA’s requirement that the Commission provide public notice, a 30-day public comment period and responses to comments on the environmental review document for the Project.³

¹ PMPD, Override Findings, pp. 1-9.

² Exh. 402, p. 31 (emphasis added).

³ CURE also incorporates herein CURE’s post hearing First Opening Brief (Attachment 1), Second Opening Brief (Attachment 2), Third Opening Brief (Attachment 3), First Reply Brief (Attachment 4), Second Reply Brief (Attachment 5), Letter to Commissioners in Response to Genesis Solar, LLC’s Supplemental Reply Brief (Attachment 6), and Motion to Strike Portions of Genesis Solar, LLC’s Reply to the Third Opening Brief of CURE – Evidentiary Hearing Day 3 Topics (Attachment 6), in

II. CEQA REQUIRES THAT THE COMMISSION PROVIDE PUBLIC NOTICE, A 30-DAY PUBLIC COMMENT PERIOD AND RESPONSES TO COMMENTS

CEQA requires the Commission to provide public notice of the availability of its environmental review document, an opportunity for public comment on the environmental assessment, and responses to public comments. Specifically, Public Resources Code section 21092 requires the Commission to provide public notice that specifies the period during which comments will be received.⁴ Public Resources Code section 21091(a) provides that the Commission's public review period may not be less than 30 days. Public Resources Code section 21091(d) requires the Commission to consider comments it receives on the draft assessment and prepare a written response. The Commission is not exempt from any of these mandatory CEQA requirements.

Under Public Resources Code section 21080.5, a certified regulatory program is "exempt from Chapters 3 (commencing with Section 21100), Chapter 4 (commencing with Section 21150), and Section 21167, except as provided in Article 2 (commencing with Section 21157) of Chapter 4.5."⁵ However, the regulatory program must require that approval of a project be preceded by the preparation of written environmental documentation that:

- 1) Includes a description of the proposed activity and mitigation measures to minimize any significant adverse environmental impacts; and
- 2) Is available for a reasonable time for review and comment by other public agencies and the general public.⁶

Furthermore, a regulatory program is ***not exempt*** from any other procedural and substantive requirements of CEQA, if such requirements are found outside of Chapters 3 and 4 of the Act, outside of section 21167 of the Public Resources Code or within section 21080.5 itself.⁷ In fact, the CEQA Guidelines themselves provide that "[a] certified regulatory program [under section 21080.5] remains subject to other provisions of CEQA..."⁸

order to ensure a complete record regarding CURE's comments on the Project and the Commission's environmental review document – whatever that may be – under CEQA.

⁴ Pub. Resources Code § 21092(a), (b)(1).

⁵ Pub. Resources Code §21080.5(c); *Environmental Protection Information Center, Inc. v. Johnson* (1st Dist. 1985) 170 Cal.App.3d 604, 616-618.

⁶ Pub. Resources Code § 21080.5(a), (d)(3).

⁷ *Environmental Protection Information Center, Inc. v. Johnson* (1st Dist. 1985) 170 Cal.App.3d 604, 616-618.

⁸ 14 Cal. Code Reg. § 15250.

When certifying the California Energy Commission's regulatory program as "functionally equivalent" under section 21080.5, the Secretary of the Resources Agency confirmed "that the program continues to meet the criteria for certification under Public Resources Code section 21080.5."⁹ Therefore, the Commission may "continue to process any...application for certification...under its current regulatory program without preparing an environmental impact report."¹⁰ The secretary did not use language exempting the program from CEQA, only from preparing an environmental impact report. "Under the maxim *expressio unius est exclusio alterius*, exemptions specified in the statute prevent additional exemptions from being implied or presumed, absent clear legislative intent to the contrary."¹¹

The courts have been clear that certified regulatory agencies are not exempt from other requirements of CEQA.¹² In *Ultramar v. South Coast Air Quality Management District*, the court considered whether the air quality management district was required to comply with section 21091(a) of the Public Resources Code, which provides that "[t]he public review period for a draft [EIR] may not be less than 30 days."¹³ In finding that the 30-day public comment period applies to public review of the air district's environmental assessment ("EA") under its certified regulatory program, the court stated that "[t]he fact that this section refers to EIR's, rather than EA's, is of no consequence."¹⁴ The court noted that the Supreme Court emphasized that "[t]he foremost principle under CEQA is that the Legislature intended the act 'to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.'"¹⁵ Section 21091, which specifies a public review period of not less than 30 days, is a part of chapter 2.5¹⁶ and, thus, certified regulatory agencies are not exempt from its mandate.

In this case, the Commission has not yet satisfied CEQA's procedural requirements described above. The Staff Assessment/Draft Environmental Impact Statement ("SA/DEIS") was released on March 26, 2010. The Commission provided a 30-day public comment period for the SA/DEIS and responded to public comments. However, a Revised Staff Assessment ("RSA") was released on June 11, 2010, the cultural resources section for the RSA was released on June 17, 2010 and

⁹ Letter from Mary D. Nichols, Secretary for Resources, to Mr. William J. Keese, Chairman, California Energy Commission, Subject: Review of the Energy Commission's Certified Program for Siting Power Plants (December 29, 2000).

¹⁰ *Id.*

¹¹ *Environmental Protection Information Center, Inc. v. Johnson* (1st Dist. 1985) 170 Cal.App.3d 604, 617.

¹² *Id.*

¹³ *Ultramar v. South Coast Air Quality Management District* (2nd Dist. 1993) 17 Cal.App.4th 689, 698-699.

¹⁴ *Id.*

¹⁵ *Id.* at pp. 699-700, citing *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 390.

¹⁶ *Id.* at 700.

a Supplemental Staff Assessment (“SSA”) was released on July 2, 2010, all of which contained significant new information requiring circulation for a 30-day public review and comment period.¹⁷ For example, the RSA contained new analyses and mitigation measures for the Project’s significant impacts to numerous special-status species based on the Applicant’s spring 2010 survey results. The revised cultural resources section contained 17 new conditions of certification. The SSA provided a new impact analysis for the Colorado River Substation expansion requiring additional mitigation to reduce the Project’s impacts on biological resources to less than significant levels. Yet, the Commission provided only a 27-day public comment period for the RSA and did not notice *any* public comment period for the cultural resources section of the RSA or for the SSA. Therefore, the RSA and subsequently released cultural resources section of the RSA and the SSA cannot be considered the draft environmental review document for purposes of CEQA.

The Commission issued the PMPD on August 19, 2010. The PMPD contains significant new information requiring circulation for a 30-day public review and comment period and responses to comments.¹⁸ For example, the PMPD concludes that the Project would result in significant, unmitigated impacts to cultural resources that were not identified in the SA/DEIS or RSA. Accordingly, the Commission properly noticed a 30-day public review and comment period for the PMPD. Now, in order to fulfill its obligations under CEQA, the Commission must provide responses to comments on the PMPD.¹⁹

III. THE PROJECT’S IMPACT ON THE COLORADO RIVER REMAINS SIGNIFICANT AND UNMITIGATED

The RSA states, “water in the Colorado River is fully appropriated and any diversion of water from the Colorado River would be a significant impact.”²⁰ Accordingly, Staff concluded that proposed Project groundwater pumping would result in a significant impact to the Colorado River because “the reduction in outflow from the CVGB to the PVMGB” that results from Project groundwater use “will be made up at least in part by inflow from the Colorado River”²¹ and “all groundwater production at the site would be considered Colorado River water.”²²

Staff’s conclusions are in accord with the Bureau of Land Management’s Final Environmental Impact Statement (“FEIS”) for the Project.

¹⁷ Pub. Resources Code, § 21092.1; CEQA Guidelines, § 15088.5.

¹⁸ CEQA Guidelines, § 15088.5.

¹⁹ CEQA Guidelines, § 15088.5(d).

²⁰ Exh. 400, p. C.9-68 (emphasis added).

²¹ Exh. 402, p. 31 (emphasis added).

²² Exh. 400, p. C.9-68 (emphasis added).

The FEIS states:

[b]ecause water within the [CVGB] is tributary to the Colorado River System, it is subject to the U.S. Supreme Court's Consolidated Decree (regarding *Arizona v. California*). Studies have estimated the flow to the Colorado River Basin as being between about 400 to 1,200 ac-ft/yr...The USGS identifies the CCGB[sic] as part of the Colorado River Basin/System in USGS SIR 2008-5113. The basin is subject to the Colorado River Compact of 1922, and the Boulder Canyon act of 1928, and Consolidated Decree (547 U.S. 150 [2006]).

Groundwater contained in the CVGB discharges across the eastern basin boundary, located between the McCoy Mountains and the Mule/Palo Verde Mountains, about 8 miles southeast of the GSEP...where it enters into the [PVMGB]. Groundwater contained in the PVMGB is hydrologically contiguous with groundwater contained in the Palo Verde Valley Groundwater Basin (PVVGB), which flanks the Colorado River. Therefore, under current/natural conditions, groundwater underlying the GSEP site flows in a southeasterly direction, into the PVVGB, and eventually influences the hydrology of the Colorado River. Downstream water right holders include California, Arizona, and Mexico.²³

Also:

[g]iven the location of the GSEP and the anticipated annual GSEP water requirements, ***the GSEP would impact the PVMGB and the Colorado River Basin.***²⁴ The Colorado River Basin is defined under the Colorado River Compact of 1922 (affirmed by 547 U.S. 150 [2006]) as, '...all of the drainage area of the Colorado River System,' where the term 'Colorado River System' is defined as the Colorado River and its tributaries..Finally, tributaries to the Colorado River were defined as, 'all stream systems the waters of which naturally drain into the mainstream of the Colorado River below Lee Ferry.'²⁵

Further:

[t]he U.S. Geological Survey has indicated that the CVGB lies within a basin tributary to the Colorado River and that wells drawing groundwater within those groundwater basins could be considered to be withdrawing water from the Colorado River Aquifer (Wilson et al., 1994). The USGS developed an accounting surface for determination of whether water was being drawn from the mainstream of the Colorado River. The accounting surface for the GSEP

²³ Genesis Solar Energy Project PA/FEIS, pp. 3.20-3-4.

²⁴ Genesis Solar Energy Project PA/FEIS, p. 4.19-2 (emphasis added).

²⁵ Genesis Solar Energy Project PA/FEIS, p. 4.19-2.

site ranged from 248 to 252 feet mean sea level (msl). Consequently, the GSEP has the potential to divert Colorado River water without an entitlement to the water, and all groundwater production at the site should be considered Colorado River water.²⁶

The FEIS later states, in its evaluation of the dry cooling alternative, that

[w]ater in the Colorado River is fully appropriated and ***the Colorado River would be impacted***. The U.S. Geological Survey has indicated that the PVMGB and CVGB lie within a basin tributary to the Colorado River and that wells drawing groundwater could be considered to be withdrawing water from the Colorado River Aquifer (Wison et al., 1994). Consequently, the GSEP has the potential to divert Colorado River water without any entitlement to the water, and ***all groundwater production at the site would be considered Colorado River water***.²⁷

In short, both Energy Commission Staff and the BLM concluded that proposed Project pumping would use Colorado River water, resulting in an impact to the River.

The Applicant disagrees and contends that the Project would not impact the Colorado River. Notably, the ***Bureau of Reclamation***, the water master for the Colorado River, stated that the ***Applicant's conclusion that the Project would not impact the Colorado River (or require an entitlement) is unjustified***.²⁸

After negotiations with the Applicant, Staff agreed to disagree about the Project's impact on the Colorado River and consented to renaming the impact on the Colorado River—now, “impacts to the PVMGB”—in an effort to avoid the Colorado River entitlement issue.²⁹ Staff subsequently revised Soil&Water-15 and Soil&Water-19.

For example, Soil&Water-15 is now entitled “Mitigation for Impacts to the Palo Verde Mesa Groundwater Basin” rather than “Mitigation of Colorado River Impacts” and instead of requiring the Applicant to “mitigate project impacts to flows in the Colorado River,” Staff is now requiring the Applicant “to mitigate project impacts that result in depletion of the PVMGB groundwater budget.” Staff also changed Soil&Water-19, originally called “Estimation of Colorado River Impacts” to “Estimation of Impacts to PVMGB.” Previously, Soil&Water-19 allowed the

²⁶ Genesis Solar Energy Project PA/FEIS, p. 4.19-2 (emphasis added).

²⁷ Genesis Solar Energy Project PA/FEIS, p. 4.19-17 (emphasis added).

²⁸ See Attachment 8, Email from William Greer of Bureau of Reclamation to William Bruninga of Bureau of Reclamation, re: Review of “Groundwater Resources Investigation, Genesis Solar Energy Project, Riverside County, California” by Worley Parsons, April, 9 2010.

²⁹ July 13, 2010 Tr., pp. 5-6, 10-13.

Applicant “to refine the estimates of the amount of subsurface water flowing from the Colorado River due to project pumping used for determining” the amount of water for mitigation in accordance with Soil&Water-15. Under the new Soil&Water-19, the Applicant must “conduct an analysis of the Project’s effect on the PVMGB groundwater budget including an estimate of the decrease in underflow from the CVGB to PVMGB.”³⁰

Importantly, however, Staff’s conclusion that the Project would significantly impact the Colorado River because “the reduction in outflow from the CVGB to the PVMGB” that results from Project groundwater use “will be made up at least in part by inflow from the Colorado River,” remains unchanged.³¹

The PMPD states that:

[b]ased on the connection between the CVGB and the Colorado River...the evidence suggests that wells drawing groundwater from the CVGB could result in impacts to the river and the adjacent PVMGB (which is located between the project site and the river). Specifically, water supplies in the Colorado River are fully appropriated, with the existing appropriations encompassing all consumptive uses (including applicable groundwater pumping) pursuant to related Supreme Court decrees.³²

The PMPD acknowledges that the “Applicant and Staff agreed that the project will decrease the amount of groundwater underflow from the CVGB to the PVMGB.”³³

The PMPD finds that Conditions of Certification Soil&Water-15 and Soil&Water-19 would reduce the Project’s impacts on the Colorado River (or, as Staff now calls it, “impacts to the PVMGB”) to less than significant levels.³⁴ However, the record shows that Soil&Water-15 and -19 are not feasible, effective mitigation measures that would reduce the Project’s impact on the Colorado River to a less than significant level.

Soil&Water-15 requires the Applicant to offset depletion of the PVMGB groundwater budget (which Staff concluded would induce flows from the Colorado River) through various water conservation projects which may include paying for irrigation improvements in Palo Verde Irrigation District (“PVID”), paying for conversion to cultivation of crops with lower crop water demand in the PVID, using tertiary treated water, implementing water conservation programs in the CVGB, PVMGB or Colorado River flood plain communities, and/or participating in BLM’s

³⁰ Exh. 443.

³¹ Exh. 402, p. 31; Staff’s Opening Brief, p. 9 (emphasis added).

³² PMPD, Soil and Water, p. 9.

³³ PMPD, Soil and Water, p. 10.

³⁴ *Id.*

tamarisk removal program.³⁵ However, as CURE explained in its First Reply Brief, the record shows that two of the water conservation projects included in the condition are not feasible, effective mitigation measures pursuant to CEQA.³⁶

The Metropolitan Water District (“MWD”) submitted comments on the SA/DEIS which stated that payment for irrigation improvements in PVID and BLM’s tamarisk removal program are **not** available to the Applicant to mitigate impacts to Colorado River water resources. Rather, the Applicant would have to obtain Colorado River water through a re-entitlement from MWD. Thus, MWD stated that Soil&Water-15 should be revised accordingly. However, MWD’s comments were ignored. Consequently, the PMPD’s finding that Soil&Water-15 would reduce the Project’s impacts on the PVMGB (and therefore the Colorado River) to less than significant is contradicted by evidence in the record.

Furthermore, there is no evidence in the record that the remaining measures in Soil&Water-15 are feasible or that they would be effective in reducing the Project’s significant impacts on the PVMGB and Colorado River to a less than significant level. For example, a condition that requires the Applicant to pay for water conservation projects without any evidence that water is actually available does not assure actual mitigation of impacts.³⁷ Thus, the Commission cannot make required findings under CEQA. Specifically, the Commission cannot find that “changes or alterations have been required in, or incorporated into, the project that would avoid or substantially lessen the effect...” of the Project’s significant impact on the PVMGB and Colorado River.³⁸

Likewise, Soil&Water-19 does not provide feasible, effective mitigation to reduce the Project’s impact on the Colorado River to a level below significant, and thus the Commission cannot rely on Soil&Water-19 for its required findings. In fact, Soil&Water-19 does not address the Colorado River at all. Where the original condition of certification would have measured how much Colorado River water the Project would draw,³⁹ the new Soil&Water-19 ignores the Colorado River altogether and instead focuses only the amount of decreased outflow from the CVGB to PVMGB as a result of proposed Project pumping.⁴⁰

³⁵ Exh. 443, pp. C.9-2-3.

³⁶ Pub. Resources Code §§ 21002.1(a), 21100(b)(3); 14 Cal. Code Regs. § 15370; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727.

³⁷ *Kings County Farm Bureau v. City of Hanford*, 221 Cal.App.3d at 728.

³⁸ Pub. Resources Code § 21081(1); 14 Cal. Code Regs. § 15091(a).

³⁹ See Exh. 443 (“SOIL&WATER-19 The Project owner may choose to refine the estimates of **the amount of subsurface water flowing from the Colorado River due to project pumping use...**”).

⁴⁰ Exh. 443.

Again, Staff and the BLM agree that because the Colorado River is fully appropriated under federal law, the Project would impact the Colorado River.⁴¹ Specifically, “water in the Colorado River is fully appropriated and any diversion of water from the Colorado River would be a significant impact.”⁴² “[T]he reduction in outflow from the CVGB to the PVMGB” that results from Project groundwater use “will be made up at least in part by inflow from the Colorado River.”⁴³ Thus, both Staff and the BLM consider all groundwater production at the site to be Colorado River water.⁴⁴ Despite these findings, Staff agreed to disregard the Project’s use of Colorado River water and eliminated the modeling prescribed in the original Soil&Water-19 that would have showed how much Colorado River mainstream water the Project groundwater pumping would draw.

An important point here is that the Project would significantly impact the Colorado River because it is fully appropriated under federal law. There is simply no way that Soil&Water-15 and -19 can mitigate this impact—neither the modeling of the decreased flow from the CVGB to the PVMGB proposed in Soil&Water-19 nor paying for water conservation projects as proposed in Soil&Water-15 will reduce this impact. In order to mitigate the Project’s significant impact on the Colorado River, the Commission must require that the Colorado River water impacted by the Project be accounted for pursuant to federal law.⁴⁵ And in order to account for the Colorado River water drawn by Project pumping, modeling must be conducted to show how much Colorado River water the Project’s groundwater pumping would draw. This is the only way to ensure that water from the fully appropriated Colorado River is not being used unlawfully.

If the Commission does not require the Applicant to determine how much Colorado River water is drawn by Project groundwater pumping as mitigation for the Project’s significant impact on the Colorado River, all Project pumping could be required to cease. According to the Bureau of Reclamation, the United States Supreme Court Consolidated Decree *Arizona v. California* 547 U.S. 150,

indicates that consumptive use includes not only use of water from the Mainstream but also includes water withdrawn from the mainstream by underground pumping.

Therefore, under the Decree, someone who diverts water from the Mainstream by underground pumping without authorization from the United

⁴¹ Genesis Solar Energy Project PA/FEIS, p. 4.19-2.

⁴² Exh. 400, p. C.9-68 (emphasis added).

⁴³ Exh. 402, p. 31; Staff’s Opening Brief, p. 9.

⁴⁴ Exh. 400, p. C.9-68; Genesis Solar Energy Project PA/FEIS, p. 4.19-17.

⁴⁵ *Arizona v. California*, 547 U.S. 150.

States could be viewed as being in contempt of the Supreme Court, and that may provide a legal avenue to pursue termination of such pumping.⁴⁶

Therefore, mitigation for the Project's significant impact on the Colorado River must include accounting for all Colorado River water drawn by the Project through a legal entitlement for the water, as required by the United States Supreme Court Decree.

IV. THE COMMISSION MUST MAKE A FINDING PURSUANT TO PUBLIC RESOURCES CODE SECTION 21081 REGARDING THE PROJECT'S SIGNIFICANT IMPACTS ON CULTURAL RESOURCES AND THE COMMISSION CANNOT MAKE ITS FINDING UNTIL AN ADEQUATE ANALYSIS OF THE PROJECT'S IMPACTS ON CULTURAL RESOURCES IS CONDUCTED, INCLUDING AN ANALYSIS OF THE PROJECT'S IMPACTS ON HUMAN BURIALS

A. CEQA Requires the Commission to Make a Finding Regarding the Project's Significant Impacts on Cultural Resources

The PMPD states that “[n]otwithstanding the implementation of the Conditions of Certification below, the project may still have significant direct and indirect unmitigated environmental impacts on cultural resources.”⁴⁷ The PMPD also finds that the Project may have significant unmitigated cumulative impacts on cultural resources. The PMPD finds that the Project's significant unmitigated cumulative impacts on cultural resources, visual resources and land use are outweighed by the Project's benefits and the PMPD overrides the remaining impacts. However, the PMPD does not make a finding of law regarding the Project's significant unmitigated direct and indirect impacts on cultural resources.⁴⁸

Public Resources Code section 21081 requires the Commission to find, with respect to each significant impact, either:

- (1) Measures have been required to mitigate or avoid the Project's significant impacts on the environment;
- (2) Those measures are within the responsibility and jurisdiction of another public agency; or

⁴⁶ See Attachment 9, Email from Steve Hvinden of the Bureau of Reclamation to Lorri Gray of the Bureau of Reclamation re: Genesis solar project question, January 15, 2010.

⁴⁷ PMPD, Cultural Resources, p. 27 (emphasis added).

⁴⁸ PMPD, Override Findings, p. 9.

- (3) Specific economic, legal, social, technological, or other factors make the measures infeasible and the benefits of the Project outweigh the Project's significant impacts on the environment.

Pursuant to Public Resources Code section 21081, the PMPD must include a finding of law regarding the Project's significant unmitigated direct and indirect impacts on cultural resources.⁴⁹

B. The Commission Cannot Override the Project's Significant Impacts to Cultural Resources Without an Adequate Impact Analysis

The Commission cannot make a finding of overriding considerations until it performs an adequate analysis of the Project's impacts on cultural resources. As CURE explained in its Second Reply Brief, before the Commission can make a finding of overriding considerations, each of the Project's significant impacts must be disclosed and analyzed and all feasible mitigation must be required.⁵⁰ Staff undisputedly completely failed to analyze the Project's impacts on ethnographic resources and buried cultural resources, including human burials. Until these analyses are performed and the Commission is adequately informed of the Project's environmental effects, the Commission cannot find that all feasible mitigation has been required, nor can the Commission find that the Project's significant direct impacts on cultural resources are outweighed by the Project's benefits.⁵¹

In addition, the PMPD must include a discussion of the Project's impacts on human burials. CEQA requires that each of the Project's significant impacts be disclosed and analyzed and all feasible mitigation must be required.⁵² Despite testimony by CURE and Staff regarding the high likelihood of the presence of human burials on the Project site,⁵³ Staff's admission that it did not analyze the Project's impacts on human cemeteries,⁵⁴ and considerable briefing dedicated to the Project's impacts on human burials, the PMPD does not mention human burials at all—not once. There is no reason why, despite substantial evidence showing that the Project would significantly impact human burials, the PMPD fails to address the issue.

⁴⁹ Pub. Resources Code, § 21092.1; CEQA Guidelines, § 15088.5.

⁵⁰ CURE's Second Reply Brief, p. 11; *San Bernardino Valley Audobon Society, Inc. v. County of San Bernardino* (1984) 155 Cal.App.3d 738; *Woodward Park Homeowners Association, Inc. v. City of Fresno* (2007) 160 Cal.App.4th 683.

⁵¹ *San Bernardino Valley Audobon Society, Inc. v. County of San Bernardino* (1984) 155 Cal.App.3d 738; *Woodward Park Homeowners Association, Inc. v. City of Fresno* (2007) 160 Cal.App.4th 683, 718.

⁵² CURE's Second Reply Brief, p. 11; *San Bernardino Valley Audobon Society, Inc. v. County of San Bernardino* (1984) 155 Cal.App.3d 738; *Woodward Park Homeowners Association, Inc. v. City of Fresno* (2007) 160 Cal.App.4th 683.

⁵³ July 21, 2010 Tr., pp. 210-211, 260.

⁵⁴ July 21, 2010 Tr., p. 179.

C. The Conditions of Certification Fail to Satisfy CEQA and Standard Archaeological Practice

The PMPD's conditions of certification do not comply with CEQA, the Secretary of the Interior's Standards and Guidelines,⁵⁵ and accepted archaeological practice, including standard archaeological practice acknowledged by Commission Staff.

First, the conditions fail to consider the potential for "unique" cultural resources as defined by CEQA.⁵⁶ The CEQA Guidelines clearly state that:

If an archaeological site does not meet the criteria defined in subdivision (a) [i.e., California Register of Historic Resources eligibility], but does meet the definition of a unique archeological resource in Section 21083.2 of the Public Resources Code, the site shall be treated in accordance with the provisions of section 21083.2. The time and cost limitations described in Public Resources Code Section 21083.2 (c-f) do not apply to surveys and site evaluation activities intended to determine whether the project location contains unique archaeological resources.⁵⁷

CEQA compliance requires appropriate efforts to identify, evaluate and treat unique cultural resources. The current conditions completely fail to acknowledge or provide a means for complying with the requirement to conduct "evaluation activities intended to determine whether the project location contains unique archaeological resources."⁵⁸ The conditions must be revised accordingly.

Second, the PMPD's conditions fail to meet existing and widely followed standard archeological practice. Standard archaeological practice is identified and outlined in a variety of sources and guidelines including (but not limited to): (1) the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation* ("SOI Guidelines");⁵⁹ (2) BLM Manual Section 8110, *Identifying and Evaluating Cultural Resources*;⁶⁰ (3) the Caltrans *Standard Environmental Reference* (Volume 2, Chapter 5 "Prehistoric Archaeological Sites: Identification, Evaluation, and Treatment");⁶¹ and (4) the Office of Historic Preservation's *California Archaeological Resource Identification and Data Acquisition Program: Sparse Lithic Scatters* ("CARIDAP").⁶² Each of these sources acknowledges that the

⁵⁵ 48 Fed. Reg. 44716, available at http://www.nps.gov/history/local-law/arch_stnds_0.htm.

⁵⁶ Pub. Resources Code § 21083.2.

⁵⁷ CEQA Guidelines 15064.5(c)(3).

⁵⁸ *Id.*

⁵⁹ 48 Fed. Reg. 44716, available at http://www.nps.gov/history/local-law/arch_stnds_0.htm.

⁶⁰ Available at:

http://www.blm.gov/pgdata/etc/medialib/blm/wo/Information_Resources_Management/policy/blm_manual.Par.23101.File.dat/8110.pdf.

⁶¹ Available at <http://www.dot.ca.gov/ser/vol2/chap5.htm>.

⁶² Available at <http://www.parks.ca.gov/pages/1069/files/caridap.pdf>.

evaluation or determination of significance/eligibility phase is distinct from mitigation or treatment, and is required prior to the establishment of final treatment or mitigation plans. For example, regarding the information needed to evaluate properties, the SOI Guidelines state:

Generally, at least the following will be needed:

1. Adequately developed historic contexts, including identified property types...
2. Sufficient information about the appearance, condition and associative values of the property to be evaluated to:
 - a. Classify it as to property type;
 - b. Compare its features or characteristics with those expected for its property type; and
 - c. Define the physical extent of the property and accurately locate the property.⁶³

The SOI Guidelines further state that, “[e]valuation of the significance of a property should be completed **before** registration is considered and **before** preservation treatments are selected.”⁶⁴

Further, with respect to significance values and eligibility criteria, the SOI Guidelines state that:

Many properties having archaeological components have associative values as well as research values. Examples include Native American sacred areas and historic sites such as battlefields...Depending upon the property type and the range of values represented by the property, it may be necessary to recover information that relates to an aspect of the property’s significance other than specified research questions. It is possible that conflicts may arise between the optimal realizations of research goals and other issues such as the recognition/protection of other types of associative values. The research design for the archaeological documentation should provide for methods and procedures to resolve such conflicts, and for the close coordination of the archaeological research with the appropriate ethnographic, social or technological research.⁶⁵

⁶³ http://www.nps.gov/history/local-law/arch_stnds_3.htm (emphasis added).

⁶⁴ See Standard III, Evaluation Results in A List or Inventory of Significant Properties That is Consulted In Assigning Registration and Treatment Priorities, available at: http://www.nps.gov/history/local-law/arch_stnds_3.htm (emphasis added).

⁶⁵ http://www.nps.gov/history/local-law/arch_stnds_7.htm.

Commission Staff formally acknowledged these standard practices and principles. The “Staff Assessment of Cultural Resources and Native American Values” for the Calico Solar Project states:

it is common professional practice in cultural resource management to conduct at least some degree of subsurface sampling of archaeological sites that may be directly and permanently affected by a proposed project (even for sparse lithic scatters).⁶⁶

Staff’s statement speaks to the *minimum* requirements for evaluating cultural resources identified in the SOI Guidelines for the identification of property types. “Sparse lithic scatters,” noted by Staff, are a site type that is defined in the Office of Historic Preservation’s CARIDAP assessment and treatment protocol. The defining characteristics of this class of site include: (1) a low surface artifact density; (2) a restricted range of types of artifacts present; and (3) the absence of a subsurface archaeological deposit. Absent subsurface excavations and testing, it is impossible to determine whether a site has or lacks a subsurface deposit, except in the most extraordinary of circumstances (e.g., artifacts found on the surface of solid bedrock.) For example, it is impossible to identify “even...sparse lithic scatters” without subsurface testing. Hence the requirement in the SOI Guidelines for the collection of adequate information to accurately classify property types during the evaluation process, prior to the establishment or treatment and mitigation measures.⁶⁷

In short, under SOI Guidelines and CEQA, and as acknowledged by Commission Staff, mitigation measures can only be developed *after* the evaluation of a historical resource has occurred. Evaluative procedures are required to accurately identify a specific resource’s property type, based in part on its associative values. Thus, the PMPD’s conditions must be revised to cure deficiencies with respect to State law, regulatory compliance and standard professional archaeological practice.

V. THE COMMISSION MUST ANALYZE SIGNIFICANT IMPACTS ASSOCIATED WITH DOWNSTREAM TRANSMISSION FACILITIES

CEQA requires the Commission to analyze the “whole of the project,” including those “crucial elements” of a project without which the project could not go

⁶⁶ Calico Solar Project “Staff Assessment of Cultural Resources and Native American Values” p. C.2-96.

⁶⁷ See Standard III, Evaluation Results in A List or Inventory of Significant Properties That is Consulted In Assigning Registration and Treatment Priorities, available at http://www.nps.gov/history/local-law/arch_stnds_3.htm.

forward.⁶⁸ Because the Project depends on the transmission upgrades identified in the Transition Cluster Phase II Interconnection Study Report (“Phase II Study”), the Commission must analyze potentially significant impacts from the upgrades.

The PMPD finds that it is speculative to identify all downstream transmission facility upgrades required for the Project and if upgrades are required, the California Public Utilities Commission (“CPUC”) will perform the CEQA review.⁶⁹ Thus, according to the PMPD, the Project “would not require additional downstream transmission facilities (other than those proposed by the Applicant) that require CEQA review.”⁷⁰ The PMPD’s conclusions are internally inconsistent, and are inconsistent with the Commission’s decision for the Blythe Solar Power Project (09-AFC-6) and the Commission’s long history of requiring an evaluation of downstream transmission facilities, as required by CEQA.

A. The PMPD is Internally Inconsistent

On one hand, the PMPD states that it is speculative to identify downstream facilities required for the Project because 1) the Phase II Study identified downstream transmission facilities required for a cluster of projects, and 2) the Commission need not analyze downstream facilities because the CPUC would conduct the analyses.⁷¹ However, the PMPD recognizes that:

Staff’s expert testified that in order to maintain system reliability, mitigation in the form of upgrades to or replacement of 16 circuit breakers would be necessary. Other mitigation would include looping the Colorado River substation connection to the Devers substation number two 500-kV transmission line into the Red Bluff substation. The record indicates that the as yet unbuilt Colorado River substation will have to be expanded but ***the expansion has been fully analyzed for environmental impacts in Exhibit 403.*** Finally, the Phase II Study requires upgrades to four 230-kV Lines that come out of the Devers substation to the west. (Ex. 400, p. D.5-7; 7/21/10 RT 43:12-45:18.) However, the ***Staff witness made clear in his testimony that these four 230 kV lines were upgrades not directly related to the GSEP interconnection.*** (7.21.10 RT 45.)⁷²

Certainly, if Staff was able to point out that some upgrades identified in the Phase II Study are not required for the Project, it is not speculative to identify which downstream facilities are required for the Project. Moreover, the record shows that

⁶⁸ *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70; *San Joaquin Raptor v. County of Stanislaus* (1994) 27 Cal.App.4th 713; *Tuolumne County Citizens for Responsible Growth v. City of Sonoma* (2007) 155 Cal.App.4th 1214.

⁶⁹ PMPD, TSE, p. 7.

⁷⁰ *Id.*

⁷¹ PMPD, TSE, p. 7.

⁷² PMPD, TSE, p. 5 (emphasis added).

Staff's expert witness testified that he did not have any information to conclude that the Project would not require any of the other downstream facilities identified in the Phase II Study.⁷³ Thus, the record in this case shows that Staff was able to identify those downstream facilities that are (or are not) necessary for the Project—it is not speculative.

Further, Staff analyzed one of the identified upgrades, the Colorado River Substation expansion in the SSA that was not noticed and circulated for public comment. The PMPD's remark that the Commission need not analyze downstream transmission facilities because it is speculative to identify downstream facilities required for the Project and because the CPUC will conduct the analyses, is incorrect and misleading. It is unclear why Staff chose to analyze only the Colorado River Substation expansion and not the proposed Red Bluff Substation when the Project would require "looping the Colorado River substation connection to the Devers substation...into the Red Bluff substation." In any event, just as Staff analyzed the Colorado River Substation expansion, the other downstream facilities identified in the Phase II Study must be analyzed.

B. The PMPD is Inconsistent with the PMPD for the Blythe Solar Power Project and Decades of Commission Practice

The Phase II Study included the Blythe Solar Power Project ("BSPP"). According to the PMPD for BSPP:

The Phase II Study identified ***six mitigation measures required to allow for the reliable operation and delivery of power from the BSPP***. Where the mitigation had the potential for significant environmental impacts ***staff has provided an environmental analysis*** in Appendix A and Appendix B of Staff's Transmission System Engineering Testimony, Ex. 217. Facilities identified in Appendices A and B may require license or approval from the CPUC and/or the Bureau of Land Management.⁷⁴

Likewise, the Staff Final Transmission System Engineering Analysis and Attachments for the BSPP stated, "[t]he project interconnection to the grid would require additional downstream transmission facilities (other than those proposed by the applicant) that ***require [CEQA] review***. The ***CEQA review*** of the downstream transmission facilities has been ***included as attachment to this document***."⁷⁵

The Committee's and Staff's conclusions in BSPP are consistent with the Commission's historical practice of evaluating environmental impacts from

⁷³ July 21, 2010 Tr., pp. 46-47.

⁷⁴ PMPD for Blythe Solar Power Project, p. 92 (emphasis added).

⁷⁵ Staff Final Transmission System Engineering Analysis and Attachments, p. D.5-1 (emphasis added).

downstream changes in the transmission system. For example, the Sunrise Texaco Combined Cycle project (98-AFC-4) Final Staff Assessment (“FSA”) stated “[a]ny **new transmission facilities** such as the power plant substation, the outlet line, and, or downstream facilities, **required for connection to the grid are considered part of the project and are subject to the full AFC review process.**”⁷⁶ Similarly, the FSA for the Donald Von Raesfeld Power Plant Project (02-AFC-3) stated, “**Staff evaluated** the proposed power plant switchyard, outline line, termination and **downstream facilities** identified by the applicant...”⁷⁷

There is nothing new here. Just as Staff and the Committee concluded in the BSPP proceeding, the Phase II Study identified “six mitigation measures required to allow for the reliable operation and delivery of power from the” Project.⁷⁸ Also, just like the BSPP proceeding, the “downstream transmission facilities (other than those proposed by the applicant)...require [CEQA] review.”⁷⁹ Further, just like the Sunrise Texaco project, any transmission upgrades required for this Project’s connection to the grid require CEQA review. And like the Donald Von Raesfeld project, the Commission must analyze downstream facilities associated with this Project.

VI. THE PMPD FAILS TO ADEQUATELY ANALYZE IMPACTS FROM THE PROJECT’S USE OF HTF

CEQA requires the Commission to disclose and analyze all of a project’s potentially significant adverse environmental impacts.⁸⁰ Identification of a project’s significant environmental effects is one of the primary purposes of an environmental review document and is necessary to implement the stated public policy that agencies should not approve projects if there are feasible mitigation measures or project alternatives available to reduce or avoid significant environmental impacts.⁸¹ To date, significant impacts associated with the Project’s use of HTF have not been adequately analyzed.

⁷⁶ Sunrise Texaco Combined Cycle project (98-AFC-4) Final Staff Assessment, Part II, p. 66 (emphasis added).

⁷⁷ Donald Von Raesfeld Power Plant Project Final Staff Assessment, p. 5.5-1 (emphasis added).

⁷⁸ PMPD for Blythe Solar Power Project, p. 92 (emphasis added).

⁷⁹ Staff Final Transmission System Engineering Analysis and Attachments, p. D.5-1.

⁸⁰ Pub. Resources Code, § 21100(b)(1).

⁸¹ *Id.*, §§ 21002, 21002.1(a).

A. The Commission Must Analyze Significant Impacts from Reasonably Foreseeable HTF Spills

The PMPD states that:

Staff accepted Applicant's estimated annual average of 750 cubic yards of spilled HTF which, we officially note, is equal to 151,500 gallons. (Ex. 400, pp. C.3-14 through C.3-15.) This amount is greater than the sum of all spilled HTF over the lifetime of SEGS, as contained in the reports submitted by CURE. We find Staff's analysis based upon an estimated 750 cubic yards of contaminated soil per year is an adequate baseline.⁸²

The PMPD's analysis is flawed for two reasons.

First, The PMPD confuses spilled HTF with HTF-contaminated soil. Specifically, the PMPD incorrectly attempts to equate gallons of spilled HTF with cubic yards of HTF-contaminated soil. The PMPD states

...Thus, most of the spills at the SEGS facilities over the last 20 years were substantially less than one cubic yard. The worst spill in the operation history of SEGS amounted to 30,000 gallons (about 150 cubic yards) of HTF on July 27, 2007 (Exh. 517, p. 2; 520). The second largest spill occurred eight years before that on May 22, 1999 which amounted to 21,000 (about 104 cubic yards). (Ex. 520) ...

...Staff accepted Applicant's estimated annual average of 750 cubic yards of spilled HTF which, we officially note, is equal to 151,000 gallons. (Ex. 400, pp. C.3-14 through C.3-15). This amount is greater than the sum of all spilled HTF over the lifetime of SEGS, as contained in the reports submitted by CURE. We find that Staff's analysis based upon an estimated 750 cubic yards of contaminated soil per year is an adequate baseline.⁸³

The PMPD's assumptions and calculations are incorrect and unsupported. There is nothing in the record that supports the PMPD's assumption that there is a one-to-one correlation between spilled HTF and HTF-contaminated soil. On the contrary, the record shows that a 30,000-gallon HTF spill (which, according to the PMPD is equal to 150 cubic yards) produced 6,558 cubic yards of HTF-contaminated soil.⁸⁴ Therefore, the PMPD's analysis is incorrect and unsupported.

Second, the PMPD's conclusion— that 750 cubic yards of contaminated soil per year is an adequate baseline – refers to the incorrect legal issue involved. The

⁸² PMPD, Waste Management, p. 10.

⁸³ PMPD, Waste Management, pp. 8-9.

⁸⁴ Exh. 517, p. 2; Exh. 520.

issue is whether Staff should have limited its analysis of foreseeable impacts from only 750 cubic yards of contaminated soil. The baseline, on the other hand, is zero cubic yards of HTF-contaminated soil since there is currently no HTF use on the proposed Project site.

As CURE explained in its First Opening Brief, substantial evidence shows that just one HTF spill could generate almost ten times the amount of contaminated soil analyzed in the RSA.⁸⁵ Thus, there is no valid basis for limiting the assessment of potential impacts from undisclosed-sized spills that result in 750 cubic yards of contaminated soil per year. Potentially significant impacts from reasonably foreseeable spills remain unanalyzed.

B. The Commission Must Analyze Significant Impacts from Free-Standing HTF

The PMPD states that:

CURE argues for separate analysis of spilled solid ‘free standing’ HTF apart from the analysis of spilled HTF in its liquid state, claiming, without citation to the record, that the two are ‘different in composition.’ (CURE Op. Brief, p. 13). We see no evidence of a change in the composition of spilled Therminol VP1 between its liquid and solid state.

Also, the PMPD states:

in the absence of evidence on point, we can assume that the two forms of HTF are the same composition. We see no reason to separately analyze spilled liquid HTF and spilled solid HTF.⁸⁶

The PMPD ignores the fact that, by definition, a “liquid” is different from a “solid.” According to Merriam-Webster, “liquid” is defined as “a fluid (as water) that has no independent shape but has a definite volume and does not expand indefinitely and that is only slightly compressible,” and “solid” is defined as “a substance that does not flow perceptibly under moderate stress, has a definite capacity for resisting forces (as compression or tension) which tend to deform it, and under ordinary conditions retains a definite size and shape.” Clearly, a liquid is different from a solid. This is elementary chemistry.

Citing to the Revised Staff Assessment, CURE explained in its brief that HTF may not remain liquid when spilled because at temperatures below 54 degrees, HTF crystallizes.⁸⁷ Also, spilled liquid HTF presents completely different potential

⁸⁵ CURE’s First Opening Brief, p. 12.

⁸⁶ PMPD, Waste Management, p. 10.

⁸⁷ CURE’s Opening Brief, p. 13 (citing Exh. 400, p. C.9-54).

impacts to the environment and therefore HTF in a different composition, i.e. liquid, is regulated differently by the State of California.⁸⁸ The record shows that at the SEGS facilities, when spilled, HTF forms wax-like piles that are scooped up or vacuumed.⁸⁹ In some instances, these piles may remain on the soil for days.⁹⁰ Thus, the Commission must analyze impacts from solid HTF that may remain on the ground for days.

C. The Commission Must Analyze Significant Impacts from Benzene in Soil and Groundwater

CURE provided extensive testimony and briefing regarding the Project's impacts from benzene as a HTF degradation product. Specifically, CURE's expert provided substantial evidence that, when spilled, workers, the public and the environment may be exposed to benzene, a known potent carcinogen. Workers may be exposed to benzene in soil as they tend to HTF spills and contaminated soils.⁹¹ Also, benzene is highly mobile in soil and does not typically adsorb to soil.⁹² As a result, releases of benzene from the degradation of spilled HTF would potentially move to groundwater.⁹³

The PMPD states that issues raised by CURE regarding worker exposure to benzene are covered in Waste Management and Public Health and Safety sections.⁹⁴ However, the Public Health and Safety section and the Waste Management sections of the PMPD only address toxic emissions of benzene in the air; ***the sections do not address benzene in soil or groundwater***, as raised by CURE in its testimony and briefing.⁹⁵ To date, the Commission has provided no analysis whatsoever for the Project's significant impacts from benzene in soil and groundwater.

VII. THE PROJECT'S IMPACTS ON SPECIAL-STATUS PLANTS REMAIN SIGNIFICANT AND UNMITIGATED

The PMPD concludes that BIO-19 would reduce the Project's impacts to special-status plants to less than significant levels.⁹⁶ The PMPD's conclusion is unsupported and fails to address CURE's extensive testimony and briefing on this issue.

⁸⁸ Health and Safety Code § 25203, 25113(a), 25123.3(a)(2), (b).

⁸⁹ Exh. 517, p. 3.

⁹⁰ Exh. 520.

⁹¹ Exh. 517, p.4.

⁹² Exh. 517, p. 5.

⁹³ Exh. 517, p. 5.

⁹⁴ PMPD, Worker Safety, p. 4.

⁹⁵ PMPD, Public Health and Safety, pp. 5-6; PMPD, Waste Management, pp. 10-11.

⁹⁶ PMPD, Biology, pp. 26, 47.

In its Third Opening Brief, CURE demonstrated that the record does not support a finding that BIO-19 would be feasible or effective in reducing the Project's impacts to special-status plants to less than significant levels, as required by CEQA.⁹⁷ First, CURE pointed out that Staff admitted:

Avoidance, minimization and compensation measures such as those described in staff's proposed Conditions of Certification BIO-19 ***could potentially*** reduce these impacts to less than significant levels. However, implementation of the avoidance measures described in these conditions of certification would ***require site specific information about the location of proposed project features in relation to sensitive plant species. Staff does not currently have the project-specific information*** and therefore ***cannot address the feasibility of implementing effective avoidance measures as a means of reducing significant impacts.***⁹⁸

Further, CURE showed that BIO-19 does not commit the Applicant to do anything to reduce the Project's impacts on special-status plants to less than significant levels. First, BIO-19 does not require the Applicant to conduct late-season surveys at a time when special-status plants would be identified.⁹⁹ Second, BIO-19 does not require avoidance of rare plants if a species is located within the permanent Project disturbance area, if avoidance would cause disturbance in areas not previously surveyed, or if avoidance would create "other restrictions."¹⁰⁰ Third, substantial evidence shows that Staff's proposed mitigation to acquire compensation lands or provide restoration/enhancement of special plants is not feasible.¹⁰¹ Finally, there is no evidence in the record that optional funding or implementing a future study would mitigate the Project's significant impacts to special-status plants. In short, the record clearly shows that BIO-19 does not provide feasible, effective mitigation. Thus, the Project's impacts on special-status plants remain significant and unmitigated.

VIII. CONCLUSION

The PMPD's conclusions that the Project's significant unmitigated cumulative impacts to cultural resources, visual resources and land use are outweighed by the benefits of the Project and that for the remaining resource areas, proposed mitigation will reduce the Project's impacts to a less than significant level, are unsupported. Rather: (1) the Project's impact on the Colorado River remains significant and unmitigated; (2) the Commission failed to analyze the Project's impacts on human burials and ethnographic resources and therefore the

⁹⁷ CURE's Third Opening Brief, pp. 13-15.

⁹⁸ Exh. 400, p. C.2-126 (emphasis added).

⁹⁹ Exh. 445, p. 4.

¹⁰⁰ Exh. 445, pp. 6-8.

¹⁰¹ July 12, 2010 Tr., pp. 182-184, 193.

Commission cannot make required findings pursuant to CEQA; (3) the PMPD's finding that downstream transmission facilities need not be analyzed is inconsistent with other cases currently before the Commission and the Commission's long history of requiring environmental review of downstream transmission facilities, as required by CEQA; (4) the Project's impacts to workers, the public and the environment from the Project's use of HTF were not adequately analyzed; and (5) the PMPD's conclusion that the Project's impacts to special-status plants will be reduced to a level below significant is not supported by the record and the impacts remain significant and unmitigated.

Dated: September 20, 2010

Respectfully submitted,

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PROOF OF SERVICE

I, Valerie Stevenson, declare that on September 20, 2010 I served and filed copies of the attached **CALIFORNIA UNIONS FOR RELIABLE ENERGY'S COMMENTS ON THE PMPD**.

The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at

www.energy.ca.gov/sitingcases/genesis. The document has been sent to both the other parties in this proceeding as shown on the Proof of Service list and to the Commission's Docket Unit electronically to all email addresses on the Proof of Service list and by either depositing in the U.S. Mail at South San Francisco, CA with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service list to those addresses NOT marked "email preferred," via personal service or via overnight mail as indicated.

I declare under penalty of perjury that the foregoing is true and correct. Executed at South San Francisco, CA on September 20, 2010.

/s/

Valerie Stevenson

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